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Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In the Matter of)

)
 The Development of Operational, Technical
 and Spectrum Requirements for Meeting
 Federal, State and Local Public Safety
 Agency Communication Requirements Through
 The Year 2010)

WT Docket No. 96-86

To: The Commission

REPLY COMMENTS OF MOUNTAIN BROADCASTING CORPORATION

Mountain Broadcasting Corporation ("Mountain"), the licensee of WMBC-TV, Channel 63, Newton, New Jersey ("WMBC"), by its attorneys, submits these Reply Comments in response to the Second Notice of Proposed Rulemaking ("2nd NPRM")¹ in the above-captioned proceeding to establish service rules for the use of public safety communications services in the 746-806 MHz spectrum band.² In an effort to develop rules for the shared use of this band, the 2nd NPRM proposes to reduce sharply the interference protection for television licensees operating on channels 60-69. Given the certain loss of broadcast service as a result of the reduction in protection and the absence of data necessary to support such an action, Mountain strongly opposes adoption of this recommendation and,

¹Second Notice of Proposed Rulemaking in WT Docket No. 96-86, FCC 97-373, released October 24, 1997.

²The Balanced Budget Act of 1997 allocated 24 megahertz of the 746-806 MHz band for the use of public safety services. See 47 USC § 337(a), as added by the Balanced Budget Act of 1997, § 3004. See also, Report and Order in ET Docket 97-157, FCC - 97-421, released January 6, 1998 (Channel 60-69 Report and Order).

instead, urges further, careful study of data gathered from actual use of this spectrum band during the digital television ("DTV") transition and thereafter.

More specifically, in the 2nd NPRM, the Commission proposes adopting co-channel spacing requirements during the DTV transition period based on a 40 dB D/U signal ratio between desired TV signals and undesired co-channel land mobile stations.³ This recommendation represents a reduction of 10 dB from the current standard of 50 dB. Any effort to reduce the existing spacing requirements would be an obvious affront to the public interest, particularly during the transition to DTV when current analog service will already be curtailed in many areas. Without the benefit of actual data on the interference protection needs of incumbent channel 60-69 broadcasters during the digital television ("DTV") transition or on the technology or system structure that actually will be employed by new users, hasty action to reduce spacing requirements would be woefully uninformed and imprudent. Moreover, the reduction in spacing requirements would increase signal interference and, in direct contravention of established Commission policy, would result in a loss of television service.

Last April, in adopting the Sixth Report and Order in the DTV proceeding, the Commission made clear that "[a]ll existing NTSC and DTV full service broadcast operations on these channels will be fully protected during the transition."⁴ The preservation of

³2nd NPRM at ¶ 233.

⁴Sixth Report and Order 12 FCC Rcd 14588 at (1997) ¶ 80 (emphasis added). This standard is currently used in the New York area only with respect to Channel 15 frequencies.

existing and established analog service during this crucial period -- for the benefit of both stations and their viewers -- has been a hallmark goal of the DTV proceeding.⁵ In its

Channel 60-69 Report and Order, the Commission similarly emphasized:

We remain committed to full interference protection for TV licensees during DTV transition. In this regard, we are adding a new footnote . . . to the Table of Frequency Allotments to indicate that existing and new television and digital television (DTV) broadcasting operations in the 746-806 MHz band will be entitled to protection from new services during the DTV transition."⁶

In contrast, the increased signal interference and service loss caused by the contemplated reduction of spacing standards would undermine this pledge.

The long-standing Commission policy of preventing a loss or interruption of existing broadcast service also would be disserved by relaxing the spacing standards. For example, maintaining service has justified waiver of the Commission's multiple ownership rules,⁷ permitted stations to operate as satellite stations,⁸ supported grant of a waiver of technical broadcast regulations,⁹ and justified a prior licensee's operation of a station after the licensee's operating authority had expired.¹⁰ Here also, the value of maintaining consistency in Commission policy, as well as the preservation of free, "off-air" television service,

⁵Id at ¶ 87 ("It is important to protect the existing NTSC service in designing the DTV table so that the public does not lose television service during the transition").

⁶Channel 60-69 Report and Order at ¶ 24.

⁷Ligget Broadcast, Inc., 7 FCC Rcd 7124 (1992) (one-to-a-market waiver) and Channel 64 Joint Venture, 3 FCC Rcd 900 (1988) (waiver of the attribution rules).

⁸Stauffer Communications, Inc., 10 FCC Rcd 5165 (1995).

⁹Siete Grand Television, Inc., 7 FCC Rcd 5299 (1992).

¹⁰RKO General Inc. (WNAC-TV), 89 FCC 2d 361 (1982).

provides compelling justification for rejecting any proposal to reduce or minimize the current channel spacing requirements without sufficient data in support.

Unless and until data is obtained on the protection criteria necessary to preserve the broadcast service of current analog users of the 746-806 MHz spectrum, the Commission must leave the present channel spacing standards intact. Without the benefit of this information, action to reduce the current levels of protection will be lacking in reliability and reasoned judgment. Notably, in the 2nd NPRM, the Commission concedes its considerable lack of information. With regard to new users of the spectrum, the Commission confessed, "it is not clear what types of services, technologies, or system architectures may be used for new types of public safety services."¹¹

Attempting to establish television/land mobile protection standards prior to the actual implementation of DTV, and in a climate of uncertainty and unavailable data, clearly is nonsensical. The postponement of prior plans to consider a similar dB reduction proposal further demonstrates the error of embracing such a recommendation now. In 1985, the Commission recommended a decrease in the D/U signal ratio from 50 dB to 40 dB for TV/land mobile sharing,¹² but held in abeyance a decision on the matter pending completion

¹¹2nd NPRM at ¶ 232. The absence of information on DTV transmissions is equally conspicuous. When weighing the options for protection criteria for DTV stations, at best, the Commission could only speculate, "DTV transmissions could exhibit a greater resistance to interference....DTV stations may be able to accept a lesser amount of protection...." Id at ¶ 235.

¹²Amendment of the Rules Concerning Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, NPRM 101 FCC 2d 852, 861 (1985).

of the DTV proceedings.¹³ That proposal must remain in abeyance. The DTV proceedings are still unresolved and information on both the public safety communications technology to be used and the interference protection needs during the DTV transition is sorely lacking. Given these circumstances, taking actions which significantly jeopardize broadcast service can not be justified.

Mountain operates WMBC on channel 63, and as a minority-owned, independent station, it will be uniquely disadvantaged by the increased exposure to interference which would result from a relaxation of the spacing rules. After a nearly eight-year comparative proceeding before the Commission,¹⁴ the station commenced operations on April 26, 1993 and began 24-hour programming on July 13, 1993. Since that time, the station has obtained a steadily growing audience exposure, both off-air and through cable carriage, although in many cases cable carriage has been obtained only through protracted and costly litigation to enforce the Commission's must-carry rules.¹⁵ WMBC offers foreign-language, local-interest and family-oriented programming strategically designed to offer the adults, teenagers and children of a growing international population less violent and more culturally and morally relevant programming than that typically available on other area network and

¹³Amendment of the Rules Concerning Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Order, 2 FCC Rcd 6441 (1987).

¹⁴Bogner-Newton Corp., 2 FCC Rcd 4792 (ALJ 1987); aff'd, 3 FCC Rcd 553 (Rev. Bd. 1988); aff'd and modified, 4 FCC Rcd 2561 (1989); recon. denied, 5 FCC Rcd 2755 (1990); appeal denied, Nos. 89-1271, 90-1270 (D.C. Circuit, Nov. 19, 1990).

¹⁵See, e.g., Complaint Against Cablevision Systems Corporation, 11 FCC Rcd 2362 (1996); Mountain Broadcasting Corporation, 10 FCC Rcd 7132 (1995); Complaint of Mountain Broadcasting, 9 FCC Rcd 5787 (1994).

independent stations. Further, station WMBC is licensed to the community of Newton, New Jersey -- located in a state for which the FCC has historically had special concern with respect to the availability of local television service.¹⁶ Additionally, consistent with the Commission's adopted policies and initiatives to increase minority participation in the management and ownership of broadcast stations,¹⁷ WMBC is minority-owned. Adoption of any proposal that would burden a station such as WMBC clearly would disserve and contradict all of these valuable Commission objectives.

Mountain consistently has advocated that the Commission utilize the "non-core" spectrum, such as channels 60 to 69, as much as possible for DTV during the transition period, but only to the extent that existing broadcast services in these frequencies are protected.¹⁸ No existing station on these channels should be faced with a reduction in interference protection before the DTV allotments have been finalized made, before the DTV transition has commenced and before the actual interference protection needs can be assessed.

¹⁶In the mid-1970s, the FCC spent several years studying television service in New Jersey, finding a need to augment locally-oriented broadcasting service for New Jersey. First Report and Order and Further Notice of Proposed Rule Making, 58 FCC 2d 790 (1976); Second Report and Order, 59 FCC 2d 1386 (1976); Third Report and Order, 62 FCC 2d 604 (1976). Even now, New Jersey has only one VHF station licensed to a community within its borders, see Multi-State Communications, Inc. v. FCC, 728 F.2d 1519 (D.C. Cir. 1984).

¹⁷See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making, 10 FCC Rcd 2788 (1995).

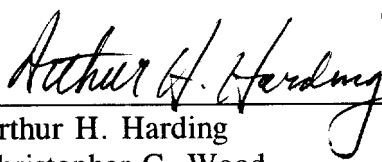
¹⁸See Emergency Petition for Reconsideration, filed in MM Docket No. 87-268 (June 13, 1997); Comments on Petitions for Reconsideration and Clarification, filed in MM Docket 87-268 (July 18, 1997) and Comments of Mountain Broadcasting Corporation on Notice of Proposed Rulemaking and Its Initial Regulatory Flexibility Analysis, filed in ET Docket 97-157 (September 15, 1997).

Rather than rush to adopt a standard without adequate information, Mountain supports MSTV's proposal that the Commission establish a committee of all entities who are or may be using the spectrum assigned to broadcast channels 60-69. A committee of broadcasters, representatives from public safety communications services and associated engineering and technology specialists, etc. should engage in an informed discussion on this matter, collect the necessary data on interference protection and offer recommendations to the Commission. Before this essential step is taken, any action on current channel spacing standards would be imprudent and premature.

Because of its impact on the use of broadcast channels 60-69, the present proceeding unavoidably impacts the Commission's efforts to finalize rules for the delivery of digital television service and effectively allocate frequencies in the 746-806 MHz spectrum band. As earlier emphasized, the Commission's proceedings on DTV and the allocation of channels 60-69 emphatically require the protection of television broadcasters in this spectrum from interference from new users. Here also, the Commission must remain faithful to this approach. Mountain, therefore, earnestly urges the Commission to reject any proposal to reduce any minimum channel spacing standards until after relevant data on the interference protection needs of all users of the spectrum has been assembled and thoughtfully considered.

Respectfully submitted,

MOUNTAIN BROADCASTING CORPORATION

A handwritten signature in cursive script, reading "Arthur H. Harding", is written over a horizontal line.

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Dated: January 26, 1998/62202

CERTIFICATE OF SERVICE

I, April Johnson, a secretary at the law firm of Fleischman and Walsh, L.L.P. hereby certify that copies of the foregoing Reply Comments of Mountain Broadcasting Corporation were served this 26th day of January 1998, via regular mail, upon the following:

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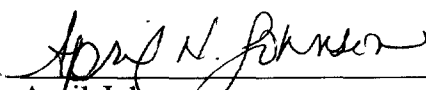
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